

## **REMARKS**

Claims 17-28, 33 and 37-45 are pending in this application. Claims 1-16, 29-32, and 34-36 were previously cancelled. Claims 17, 19-28, and 37-45 have been amended. Support for the amendments to the claims can be found throughout the specification and claims as originally filed as discussed below.

Any cancellation of the claims should in no way be construed as acquiescence to any of the Examiner's rejections and was done solely to expedite the prosecution of the application. Applicant reserves the right to pursue the claims as originally filed in this or a separate application(s).

As a preliminary matter, Applicant thanks the Examiner for his time and courtesy during the telephonic interview on April 1, 2009. The claims were discussed and the amended claims are set forth above to reflect that discussion.

### **Rejection of Claims 17-28, 33 and 37-45 Under 35 USC 112, first paragraph**

The Examiner has rejected claims 17-28, 33 and 37-44 under 35 USC 112, first paragraph, for failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

The Office Action states that claims 17, 19, 20, 25-28, and 41-44 all appear to invoke 35 U.S.C. §112, paragraph 6 by reciting "means plus function" language. The Office Action has specifically pointed to the language in the following claims:

Claim 17: "means for containing and protecting" and "means for covering".

Claims 19 and 20: "means for causing fluid flow", "means for collecting and retaining", and "means for preventing backflow".

Claims 24-28: "means for containing".

Claims 41-44: "means for remotely controlling".

The Office Action asserts that the claims fail to comply with the written description requirement because the specification allegedly fails to link or associate a particular structure, material, or acts to the function recited in the means-plus-function limitation. Applicant

respectfully disagrees. However, purely to progress the prosecution of the application, Applicant has amended the claims as set forth above to remove the means language. Support for each of the amendments to the means-plus-function language can be found throughout the specification and in the drawings. For example, “means for containing and protecting” is supported by the specification on page 9, lines 9-11 and page 13, lines 24-26; “means for covering” is supported by page 14, line 2 and page 16, lines 14-15; “means for causing fluid flow” is supported on page 9, lines 13-15 and page 14, lines 4-6; “means for collecting and retaining” is supported on page 14, line 6; “means for preventing backflow” is supported on page 9, line 17; “means for containing” has been removed from the claims; and “means for remotely controlling” is supported on page 16, lines 18-19. Support for the amendment to the “means for enhancing the signal-to noise ratio” in claims 37 to 40 is supported in the specification, for example on page 17, lines 20-22.

Applicant notes that the “means-plus-function” language was in the claims as originally filed. The Office discourages piecemeal examination in MPEP, section 707.07(g) which states:

Piecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references. (See MPEP § 904.03.) Major technical rejections on grounds such as lack of proper disclosure, lack of enablement, serious indefiniteness and *res judicata* should be applied where appropriate even though there may be a seemingly sufficient rejection on the basis of prior art.

Moreover, two prior issued Office Actions (October 18, 2007 and July 25, 2008) have indicated that the claims including the means-plus-function language would be allowable without amendment to the means-plus-function language. Applicant requests that if a further Office Action is to be issued in the instant case, that the action be non-final, especially if original claim language is to be rejected.

Applicants respectfully request that the rejection be withdrawn.

#### **Rejection of Claims 17-28, 33 and 37-45 Under 35 USC 112, second paragraph**

The Examiner has rejected claims 17-28, 33 and 37-45 under 35 USC 112, second paragraph, for alleged infiniteness and failing to distinctly point out the subject matter claimed. Applicants respectfully disagree.

However, to progress the prosecution of the application, Applicant has amended the claims as set forth above.

The Office Action has rejected claims 17, 19, 20, 25-28, and 41-44 for including means-plus-function language as discussed in the rejection for lack of written description. Applicant has amended the claims as set forth above to remove the means-plus-function language. Support for the amendments is noted above. Applicant submits that the metes and the bounds of the claims are clearly set forth in the claims.

The Office Action has rejected claim 17 for allegedly being indefinite for being unclear how sampled microorganisms would be retained in a block with flow through openings. Applicant thanks the Examiner for suggesting claim language to overcome this rejection. Applicant has amended the claim per the suggestion of the Examiner. Withdrawal of the rejection is requested.

The Office Action has rejected claim 45 for being indefinite for including the recitation of "said microtiter plate." Applicant has amended the claim as set forth above to recite "said microcosm". Withdrawal of the rejection is respectfully requested.

Applicant has amended claims to correct informalities particularly in regard to antecedent basis and to provide proper Markush language. The amendments to the claims do not alter the scope of the claims.

Accordingly, Applicants believe that all claims 17-28, 33 and 37-45 are allowable.

#### **Fee Authorization**

It is believed that there is no fee due with this response. However, if a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 04-1105 referencing Docket No. 62588(71699) any fees related to this application filed by this firm. Credit of any overpayments to the same Deposit Account is requested.

Application No.: 10/797,713  
Amendment Dated: April 3, 2009  
Reply to Office Action Dated: February 20, 2009

Docket No: 62588(71699)

**Conclusion**

In view of the above amendment, Applicant believes the pending application is in condition for allowance. If a telephone conference with the Applicant's Agent would expedite allowance of this application, the Examiner is asked to call the undersigned at the number indicated below.

Dated: April 3, 2009

Respectfully submitted,

By /Colleen McKiernan/  
Colleen McKiernan, Ph.D.  
Registration No.: 48,570  
EDWARDS ANGELL PALMER & DODGE  
LLP  
P.O. Box 55874  
Boston, Massachusetts 02205  
(617) 517-5555  
Attorneys/Agents For Applicant